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OFFICE OF PETITIONS

In re Application of :
Watson et al. :
Application No. 09/940,969 :
Filed: August 28, 2001 :
Attorney Docket No. 79368.000 :
:

ON PETITION

This is a decision on the renewed petition under 37 CFR 1.181 to withdraw the holding of abandonment, filed June 13, 2006.

The petition to withdraw the holding of abandonment is **Dismissed**.

This application became abandoned for failure to timely submit a complete set of corrected drawings, as required by the Notice Regarding Drawings which was mailed October 28, 2004. The Notice Regarding Drawings set a one (1) month period for reply. A reply was submitted on December 13, 2004. However, a Notice of Abandonment was mailed indicating the reply submitted on December 13, 2004 was not a proper reply because replacement figures 3-13 were not submitted as required.

Petitioner states she received the Notice Regarding Drawings and called the examiner. Petitioner states the examiner faxed a copy of the drawing and a letter regarding the changes to the drawing. Petitioner believed the corrected drawing was sufficient and relied upon the assistance the examiner provided. Petitioner insist that she had no intention to abandon her application. On renewed petition, petitioner continues to advance the same arguments of her earlier petitions. However, petitioner now states that she contacted the draftsperson but due to a language barrier she was required to contact the examiner.

Petitioner's argument has been considered, but is not persuasive to establish the abandonment should be withdrawn. The Notice Regarding Drawings clearly states that the drawings were objected to because "the lines, numbers and letters are not uniformly thick, and well defined, clean, durable and black (poor line quality) figs. 1-13". The Notice also required corrected drawings. As such petitioner was required to send in corrected drawings for figures 1-13, not just figures 1 and 2. The interaction petitioner

had with the examiner cannot supersede the requirements presented in the Notice Regarding Drawings.

Pursuant to 37 CFR 1.2, all business with the Patent and Trademark Office should be transacted in writing. The action of the Patent and Trademark Office will be based exclusively on the written record in the Office. No attention will be paid to any alleged oral promise, stipulation, or understanding in relation to which there is disagreement or doubt. It should be noted the letter from the examiner constitutes unofficial communication which is not deemed as part of the record.

Petitioner may wish to consider filing a petition to revive based on unintentional abandonment under 37 CFR 1.137(b). A grantable petition pursuant to 37 C.F.R. § 1.137(b) must be accompanied by the required reply, the required petition fee, and a statement that the **entire** delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 C.F.R. § 1.137(b) was unintentional.

The filing of a petition under 37 C.F.R. § 1.137(b) cannot be intentionally delayed, and therefore, must be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 C.F.R. § 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 C.F.R. § 1.137(b).

Petitioner is also reminded that any future correspondence should contain the application number.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300

By delivery service:
(FedEx, UPS, DHL, etc.) U.S. Patent and Trademark Office
Customer Service Window,
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries concerning this matter should be directed to the undersigned at
(571) 272-3215.



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